

The issue raised on appeal is one subject to review on appeal from a preliminary order. As further described below the issue raised is, in effect, whether the injuries for

which claimant is seeking preliminary benefits arose out of and in the course of her employment with the first employer, B. K. Enterprises. K.S.A. 44-534a, as amended by S.B. 649 (1996), provides that the Appeals Board has jurisdiction to review findings regarding whether an injury arose out of and in the course of employment.

The Appeals Board finds that claimant suffered a new injury, even if temporary, in her employment for Dunbar Trucking. The benefits ordered were necessitated by that new injury and should be ordered paid by respondent Dunbar Trucking and its insurance carrier.

Claimant first suffered injury on May 9, 1994 while working for B. K. Enterprises, Inc. On that date she hit her left knee on the knob against the window crank inside the truck she was driving to haul rock for her employer. She reported the injury and respondent B. K. Enterprises, Inc., provided medical treatment. The medical treatment included surgery performed by Dr. Richard G. Wendt. Dr. Wendt released her in August of 1994 and claimant returned to work at that time. With certain accommodations, she continued to work on a full-time basis for over a year.

On September 7, 1995, while working for Dunbar, claimant experienced increased symptoms in her knee which she attributed to repeated trips driving a truck through a rough pasture. Claimant again sought treatment from Dr. Wendt. His initial office notes state: "Linda re-injured her left knee several days ago when she was driving across a bumpy pasture." Dr. Wendt later opined, in response to inquiry from claimant's counsel, that the treatment provided after September 1995 was not the result of a new injury but was, instead, the result of an aggravation of the original injury suffered on May 9, 1994. On the basis of this evidence, the Administrative Law Judge concluded the benefits should be awarded paid by respondent B. K. Enterprises, Inc., and its insurance carrier.

The evidence indicates that there was not a new permanent injury in September 1995. The evidence shows, on the other hand, a temporary aggravation resulting from work activities in the course of employment for Dunbar Trucking & Excavation, Inc. The temporary aggravation was the reason for the additional medical expense and additional period of temporary total disability. This temporary aggravation constitutes a new injury, even if only temporary. Claimant had reached maximum medical improvement from her injury at B. K. Enterprises, Inc., prior to this temporary aggravation. The Appeals Board, therefore, finds the preliminary benefits awarded by the Administrative Law Judge should be paid by respondent Dunbar Trucking & Excavation, Inc., and its insurance carrier.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Floyd V. Palmer dated April 17, 1996, should be, and the same is hereby, modified to provide that the benefits should be ordered paid by respondent Dunbar Trucking & Excavation, Inc., and its insurance carrier, CNA.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1996.

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BOARD MEMBER

c:     Derek Chappell, Ottawa, KS  
       Gary R. Terrill, Overland Park, KS  
       Dana D. Arth, Lenexa, KS  
       Floyd V. Palmer, Administrative Law Judge  
       Philip S. Harness, Director